

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL PATRICK JOLIVETTE,
Plaintiff,
v.
PEOPLE OF CALIFORNIA, et al.,
Defendants.

No. 2:21-cv-0382-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a). For the reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed in forma pauperis:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Court records reflect that on at least three prior occasions, plaintiff has brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See* (1) *Jolivette v. State of California*, No. 2:13-

1 cv-0069-TLN-DAD (E.D. Cal.), ECF No. 19 (August 26, 2014 order dismissing action for failure
2 to state a cognizable claim for relief); (2) *Jolivette v. State of California*, No. 3:16-cv-0092-RCJ-
3 WGC (D. Nev.), ECF Nos. 4 & 8 (April 26, 2016 order denying application for leave to proceed
4 in forma pauperis and dismissing action as one of many “factually frivolous” actions previously
5 filed by plaintiff where he “attempt[ed] to register and execute on purported foreign judgments”)
6 and (3) *Jolivette v. State of California*, No. 16-16278 (9th Cir.) (May 18, 2017 order denying
7 plaintiff’s application for leave to proceed in forma pauperis and dismissing appeal as frivolous).

8 The section 1915(g) exception applies if the complaint makes a plausible allegation that
9 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
10 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). In this case, plaintiff
11 again seeks to register a “foreign money judgment.” See ECF No. 1 (alleging he is owed
12 \$13,605,902).

13 The complaint fails to demonstrate that plaintiff was under an imminent danger of serious
14 physical injury when he filed this action. Plaintiff’s application for leave to proceed in forma
15 pauperis must therefore be denied pursuant to § 1915(g). Plaintiff must submit the appropriate
16 filing fee in order to proceed with this action.

17 Accordingly, because plaintiff has not paid the filing fee and is not eligible to proceed in
18 forma pauperis, IT IS RECOMMENDED that:

- 19 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and
- 20 2. Plaintiff be ordered to pay the \$402 filing fee within fourteen days from the date of any
21 order adopting these findings and recommendations and be warned that failure to do so will result
22 in the dismissal of this action.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned
27 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: March 19, 2021.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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